

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	
v.)	File No. CSR-7876-P
Comcast Cable Communications, LLC,)	
Defendant)	
)	

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Chief Administrative Law Judge Richard L. Sippel

**ENTERPRISES’ REPLY IN SUPPORT OF
EXPEDITED MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Comcast Cable Communications, LLC (“Comcast”) offers no reason why it should not be required to respond to the limited requests made in NFL Enterprises LLC’s (“Enterprises”) Expedited Motion to Compel Production of Documents.¹ Nor does it offer any reason for its delay in taking steps it claims are necessary to complete its production, instead implausibly blaming Enterprises for not delaying even longer in seeking documents that should have been produced a week ago. To the contrary, Comcast’s Opposition reflects Comcast’s continued effort to oppose any meaningful production of the most essential documents in this litigation – what Comcast calls its “crown jewels”² – even as it has urged that the Presiding Judge order the broadest possible discovery in this matter. Since Enterprises must file its expert

¹ Defendant’s Opposition to Expedited Motion to Compel Production of Documents, *NFL Enters. LLC v. Comcast Cable Comms, LLC*, MB Docket No. 08-214, File No. CSR-7876-P (Mar. 3, 2009) (“Opposition”); Expedited Motion to Compel Production of Documents, *NFL Enters. LLC v. Comcast Cable Comms, LLC*, MB Docket No. 08-214, File No. CSR-7876-P (Mar. 3, 2009) (“Motion to Compel”).

² Opposition at 3.

report in just two days, Comcast's delay already has cost Enterprises the opportunity to meaningfully analyze these documents. Further delay would only compound the prejudice to Enterprises.

A. Request Number 1³

Comcast does not argue that the agreements Enterprises seeks in its Request Number 1 are not relevant. Nor does Comcast argue that it would be burdensome to produce them. Comcast only argues that its counterparties have not had enough notice of their production and that Enterprises brought its motion too early.⁴

But it is Comcast, not Enterprises, that has treated its counterparties unfairly by waiting, in Comcast's words, until "last week" to notify Versus' and the Golf Network's distributors that their agreements were sought. By waiting this long, even though Comcast first disclosed its plan to obtain consent on December 15, 2008, Comcast virtually guaranteed that it would not receive consent in time to meet the agreed-upon production deadline. Particularly when it is undisputed that these agreements are available and directly relevant to this proceeding, Comcast's own delay cannot justify further prejudicing Enterprises' ability to conduct this case.

B. Request Number 4⁵

Enterprises has asked Comcast to produce agreements with independent sports networks that may demonstrate either that Comcast does not carry independent sports networks

³ "All agreements and draft agreements concerning any MVPD's carriage of any of [Comcast's] Affiliated Networks."

⁴ Opposition at 1, 9.

⁵ "All agreements and draft agreements concerning [Comcast's] receipt of any payment, preferential arrangements, any other consideration or anything else of value, tangible or intangible (including programming concessions on other services), in connection with [Comcast's] carriage of any independent sports network on any tier or package other than the Sports Entertainment Package tier."

outside of the Sports Entertainment Tier – which Comcast denies, at least as to ESPN⁶ – or that it does so only after demanding consideration that is more substantial than the consideration it requires of its affiliated sports networks. This information is directly relevant to whether Comcast discriminated against the NFL Network, an independent sports network, because it is unaffiliated.

Comcast cannot fairly claim that it cannot respond to Request Number 4,⁷ because Enterprises has explained to Comcast precisely what types of agreements it seeks – agreements that:

1. authorize Comcast’s carriage of an Independent Sports Network, as that term is defined in Enterprises’ requests;
2. include an agreement that the Independent Sports Network will be carried on a tier other than the Sports Entertainment Package (either expressly or through a comparable commitment such as total number of subscribers); and
3. provide for Comcast to receive consideration other than the right to distribute the Independent Sports Network.

Enterprises imposed this limitation to benefit Comcast by limiting the burden that Comcast claimed the request would create. Enterprises now has learned that Comcast has actually notified several programmers that their agreements are subject to the Motion to Compel, even as it argued in its Opposition that the request was ambiguous. At a minimum, Comcast should produce those agreements.

CONCLUSION

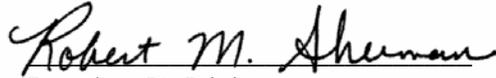
It is already too late for Enterprises’ expert to include an analysis of Comcast’s responsive carriage agreements – which the Presiding Judge and the Commission have found are

⁶ Opposition at 7 n.4.

⁷ See Opposition at 2.

relevant to carriage discrimination disputes⁸ – in his expert report, and further delay will only compound this injury to Enterprises’ ability to prosecute its case fairly. Enterprises’ Expedited Motion to Compel Production of Documents should be granted, and Comcast should be ordered to produce these few documents immediately.

Respectfully submitted,



Jonathan D. Blake

Gregg H. Levy

Paul W. Schmidt

Robert M. Sherman

Leah E. Pogoriler

COVINGTON & BURLING LLP

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2401

(202) 662-6000

Counsel for NFL Enterprises LLC

March 4, 2009

⁸ See, e.g., Motion to Compel at 7.

CERTIFICATE OF SERVICE

I, Robert M. Sherman, certify that on this 4th day of March, 2009, I caused a true and correct copy of the foregoing Reply in Support of Expedited Motion to Compel Production of Documents to be served via electronic mail upon:

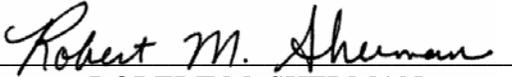
David H. Solomon
L. Andrew Tollin
Robert G. Kirk
J. Wade Lindsay
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037

James L. Casserly
Michael H. Hammer
Megan A. Stull
Michael Hurwitz
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006

Michael P. Carroll
David B. Toscano
Antonio J. Perez-Marques
Jennifer A. Ain
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

*Counsel to Comcast Cable
Communications, LLC*

Kris Anne Monteith
Hillary S. DeNigro
William Davenport
Gary Schonman
Elizabeth Mumaw
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554


ROBERT M. SHERMAN